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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164988
Party	Plaintiff ROLEX WATCH U.S.A., INC. ROLEX WATCH U.S.A., INC. 665 FIFTH AVENUE NEW YORK, NY 10022
Correspondence Address	BRIAN W. BROKATE GIBNEY, ANTHONY & FLAHERTY, LLP 665 FIFTH AVENUE NEW YORK, NY 10022
Submission	Motion for Sanctions
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Date	02/10/2006
Attachments	rollex speed motion 21006.pdf (22 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ROLEX WATCH U.S.A., INC.)	
)	
Opposer,)	Opposition No. 91,164,988
)	Serial No. 78/316,818
v.)	
)	
FERNANDO BUGALLO)	
)	
Applicant.)	
_____)	

OPPOSER'S MOTION FOR SANCTIONS

The Opposer, Rolex Watch U.S.A., Inc. ("Opposer"), through its counsel, hereby moves this Board for an Order for sanctions entering judgment, with the opposition being sustained and registration being refused to the Applicant, Fernando Bugallo ("Applicant"), pursuant to 37 C.F.R. 2.120(g)(2).

On September 8, 2005, in accordance with Rules 33 and 34 and 37 C.F.R. § 2.120, Opposer served upon Applicant a First Set of Interrogatories and First Requests for Production of Documents, copies of which are attached hereto as Exhibit A and collectively referred to herein as "Opposer's discovery requests."¹ Applicant failed to provide any response to Opposer's discovery requests. Accordingly, counsel for Opposer contacted counsel for Applicant, pursuant to 37 C.F.R. § 2.120(e), in a good faith effort to try to resolve the issues relating to Applicant's failure to respond to Opposer's discovery requests, and in order to avoid the necessity of filing a motion to compel. In response, counsel for Applicant advised that no responses to the discovery

¹ On this date, Opposer also served its First Requests for Admissions. Applicant failed to make any response to these requests. Accordingly, Opposer's First Requests for Admissions stand admitted. See 37 C.F.R. §2.120(h) and 37 C.F.R. §2.120(j)(3)(i).

would be forthcoming. Therefore, a motion for sanctions in the nature of judgment is appropriate in lieu of a motion to compel.

Since none of Opposer's discovery requests have been answered, and since counsel for Applicant indicated that no answers would be provided, Opposer is entitled to sanctions in the nature of judgment, with the opposition being sustained and registration being refused to Applicant, pursuant to 37 C.F.R. 2.120(g)(2).

Respectfully submitted,

Dated: February 10, 2006

By: 

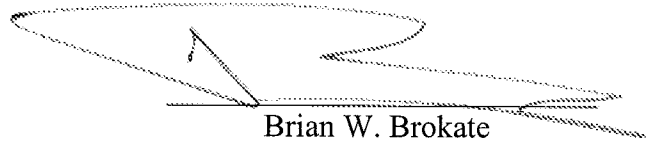
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that the Opposer's Motion for Sanctions has been served upon Applicant's correspondent via First Class Mail, postage prepaid, on February 10, 2006:

Daniel S. Polley, P.A.
1215 East Broward Boulevard
Fort Lauderdale, FL 33301



Brian W. Brokate

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ROLEX WATCH U.S.A., INC.)	
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Opposer,)	Opposition No. 91,164,988
)	Serial No. 78/316,818
v.)	
)	
FERNANDO BUGALLO)	
)	
Applicant.)	
_____)	

OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Rolex Watch U.S.A., Inc. ("Rolex" or "Opposer") requests that Applicant serve upon Opposer sworn answers to the interrogatories set forth below within thirty (30) days after the service hereof. For the convenience of the Board and the parties, Opposer requests that each interrogatory be quoted in full immediately preceding the response.

DEFINITIONS AND INSTRUCTIONS

a. The word "person" shall mean and include without limitation, individuals, firms, associations, partnerships and corporations.

b. The term "Applicant" "you" or "your" shall mean Fernando Bugallo, his predecessors-in-interest and his licensees with respect to the opposed mark, and shall include, individually or collectively, any affiliated or related partner or company and its officers, directors, employees, agents or representatives having any involvement with the use of the term, mark, or designation ROLL-X SPEED as defined below.

c. The term "Opposer" refers to Rolex Watch U.S.A., Inc. and any of its employees and representatives.

d. In the following discovery requests, the term "document" or "documents" is used in its customarily broad sense to mean all non-identical copies of all documents within the scope of Rule 34, Fed. R. Civ. P., including, without limitation, reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; opinions of counsel; communications of any nature including internal company communications; memoranda; notes; letters; e-mail; agreements; reports or summaries of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of documents and revisions of drafts of document and any written, printed, typed or other graphic matter of any kind of nature; drawings; photographs; charts; electronically stored data; and all mechanical and electronic sound recordings or transcripts thereof, in the possession and/or control of Applicant or its employees or agents, or known to Applicant to exist, and shall include all non-identical copies of documents by whatever means made and whether or not claimed to be privileged or otherwise excludable from discovery. By way of illustration only and not by way of limitation, any documents bearing on any sheet or side thereof any marks, including, but not limited to, initials, stamped indicia, comment or notation of any character and not a part of the original text or any reproduction thereof, is to be considered a separate document. In the case of a machine readable document, identify the specifications and/or common name of the machine on which the document can be read such as "VHS videotape," "MS DOS (IBM) PC using WordPerfect 5.1" or the like.

e. In the following discovery requests, where identification of a document is required, such identification should describe the document sufficiently so that it can be

specifically requested under Rule 34 of the Federal Rules of Civil Procedure and should include without limitation the following information, namely:

- i. the name and address of the author;
- ii. the date;
- iii. the general nature of the document, i.e., whether it is a letter, memorandum, pamphlet, report, advertising (including proofs), etc.,
- iv. the general subject matter of the documents;
- v. the name and address of all recipients of copies of the documents;
- vi. the name and address of the person now having possession of the original and the location of the original;
- vii. the name and address of each person now having possession of a copy of and the location of each such copy;
- viii. for each document Applicant contends is privileged or otherwise excludable from discovery, the basis or such claim of privilege or other grounds for exclusion; and
- ix. whether Applicant is willing to produce such document voluntarily to Opposer for inspection and copying.

f. Wherever the identification of documents is called for in these interrogatories, Applicant may, in lieu of such identification, produce such documents marked with the number of the interrogatory to which it is responsive, for inspection and copying by Opposer at the time Applicant serve their answers to these interrogatories.

g. Wherever the discovery requests call for an answer rather than the identification of documents, an answer is required, and the production of documents in lieu of an answer will not satisfy the requirement that an answer be provided.

h. In the following discovery requests, where identification of a person, as defined, is required, state: the person's full name, state of incorporation, if any, present and/or last known home address (designating which), present and/or last known position or business affiliation (designating which) and/or present or last known (designating which) affiliation with Applicant, if any. In the case of a present or past employee, officer or director or agent of Applicant, also state the person's period of employment or affiliation with Applicant, and his or her present or last position during his affiliation with Applicant.

i. In the following discovery requests, where identification of an oral communication is required, state the date, the communicator, the recipient of the communication, and the nature of the communication.

j. In the following discovery requests, unless the context of the question dictates a broader time reference, the questions refer to the time beginning with the earliest date upon which Applicant may attempt to rely for priority purposes in this proceeding.

k. All references in these discovery requests to "commerce" signify commerce that may lawfully be regulated by the U.S. Congress.

l. All references in these Discovery Requests to the ROLL-X SPEED mark, refer to Applicant's mark, subject of Application Serial Number 78/316,818.

m. Whenever used herein, the term "&" shall be deemed to include the term "and"; the singular shall be deemed to include the plural, the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine and the feminine shall be

deemed to include the masculine; the disjunctive (“or”) shall be deemed to include the conjunctive (“and”), and the conjunctive (“and”) shall be deemed to include the disjunctive (“or”); and each of the functional words “each,” “every,” “any,” and “all” shall be deemed to include each of the other functional words.

n. These interrogatories shall be deemed continuing. Your attention is directed to Rule 26(e)(2) of the Federal Rules of Civil Procedure which provides as follows:

A party is under a duty seasonably to amend a prior response if a party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

INTERROGATORIES

INTERROGATORY NO. 1

Identify with particularity each type of product or service promoted, sold, rendered or proposed to be promoted, sold, or rendered by Applicant (see Definitions and Instructions) in connection with the mark or designation ROLL-X SPEED (see Definitions and Instructions) at any time in the United States.

INTERROGATORY NO. 2

Identify the person or persons in the employ of or associated in any manner with Applicant most knowledgeable with respect to the following:

- (a) Applicant’s selection, and adoption of Applicant’s ROLL-X SPEED marks in the United States;
 - (b) Applicant’s use of the Applicant’s ROLL-X SPEED marks in the United States;
- and

- (c) Applicant's sales and advertising of the goods and services identified by Applicant's ROLL-X SPEED marks in the United States.

INTERROGATORY NO. 3

Identify all advertising agency, public relations, website design or Internet consulting firms that are now or have ever been employed by Applicant in connection with the use, scheduled use or planned use of the mark or designation ROLL-X SPEED including the identity of those persons responsible for Applicant's account with respect to the use, scheduled use, or planned use of the mark or designation ROLL-X SPEED.

INTERROGATORY NO. 4

State the earliest date Applicant are entitled to rely upon for priority in this proceeding and describe in detail the circumstances (i.e., the use or the application filing, by serial number) giving rise to such alleged actual or constructive priority rights, specifically including, but not limited to, an identification of the mark or designation being relied upon, the goods or services offered or applied for under that mark or designation on that date and the persons in the employ of or associated in any manner with Applicant most knowledgeable with respect thereto.

INTERROGATORY NO. 5

State the inclusive dates subsequent to the dates set forth in answer to Interrogatory No. 4 during which the mark or designation ROLL-X SPEED has been used by or on behalf of Applicant in connection with the products and services identified in response to Interrogatory No. 1, and for each such year (or month for periods of less than a year), state the geographical areas of the United States in which Applicant sold the goods and/or offered services and/or promoted the goods and services under the mark or designation ROLL-X SPEED.

INTERROGATORY NO. 6

For each year for which Applicant claim use of the mark or designation ROLL-X SPEED identify representative publications and broadcast advertisements (e.g., radio, television, website) authorized by or on behalf of Applicant in which goods or services under the mark or designation ROLL-X SPEED have been, or are scheduled to be mentioned, by stating the following:

- (a) State the title(s) date(s) and circulation area of each publication in which any advertisement appeared or is scheduled to appear;
- (b) Identify each actual or scheduled broadcast by:
 - (1) date(s);
 - (2) station(s) or website(s); and
 - (3) whether the broadcast was or will be on radio, television or computer; and
- (c) State the numbers of persons in the United States to whom the publication or broadcast was or is expected to appear if known.

INTERROGATORY NO. 7

Identify all trade shows, professional shows, professional meetings, seminars, conferences, and conventions where Applicant or another on Applicant's behalf has promoted or offered goods and/or services, or is scheduled to promote or offer goods and/or services identified by the mark or designation ROLL-X SPEED by stating, for each show, meeting, seminar, conference, or convention, the following:

- (a) the name of the show, meeting, seminar, or convention, where held or to be held, and the dates when held or to be held;
- (b) the type of goods or services promoted or offered at each show by Applicant under the mark or designation ROLL-X SPEED; and

(c) each employee or representative of Applicant who was present at such show, meeting, seminar, or convention.

INTERROGATORY NO. 8

State the annual dollar volume of Applicant's sales in the United States of goods and services under the mark or designation ROLL-X SPEED from the first sale of each type of product and service to the present; indicating the sales for each type of product and service for each year (or for each month for periods of less than a year).

INTERROGATORY NO. 9

State the annual advertising and promotional expenditures in the United States by or on behalf of Applicant relating to the promotion of goods and services under the mark or designation ROLL-X SPEED from the first sale of each type of product and service to the present, indicating the 8 advertising and promotional expenditures for each type of product and service for each year (or for each month for periods of less than a year).

INTERROGATORY NO. 10

Identify all instances of actual confusion, mistake or deception known to Applicant as to the source or origin, sponsorship or association as between its use or proposed use of any mark or designation consisting of or including the term ROLL-X SPEED for any goods or services and Opposer's use of the ROLEX mark.

INTERROGATORY NO. 11

Describe when and by what means Applicant first became aware of Opposer's use of any mark or designation consisting of or including the term ROLEX Further state what if any steps were taken by Applicant with respect to that first knowledge, including whether any searches or

investigations were conducted concerning Opposer's ROLEX mark, and the results of said searches or investigations.

INTERROGATORY NO. 12

Describe by common commercial marketing term (e.g., Internet, direct sales representatives) all of the channels of trade in or through which Applicant markets and sells or intends to market and sell products or services under the mark or designation ROLL-X SPEED in the United States.

INTERROGATORY NO. 13

Identify by gender, age, and socioeconomic group, if known, the classes or types of purchasers to whom Applicant promotes, or intends to promote, their products or services and who purchase Applicant's products or services under the ROLL-X SPEED mark or designation in the United States.

INTERROGATORY NO. 14

Identify each person whom Applicant expects to call as an expert witness at "trial," state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

INTERROGATORY NO. 15

Identify each person (see Definitions and Instructions) Applicant is aware of who now or ever has used, applied for, or registered any mark, company name, or trade name consisting of, or including, the term ROLL-X SPEED.

INTERROGATORY NO. 16

State the name of the parties, civil action number or opposition or cancellation number and jurisdiction of all legal proceedings brought by Applicant against a third party involving the ROLL-X SPEED mark, which concern allegations of trademark, service mark or trade dress infringement, unfair competition, dilution or tarnishment.

INTERROGATORY NO. 17

For each product and/or service Applicant offers or intends to offer under the ROLL-X SPEED mark or designation, state the price at which Applicant's product and/or services under the ROLL-X SPEED mark or designation are offered to the ultimate consumer.

INTERROGATORY NO. 18

Identify those persons who had more than a clerical role in the answering of the foregoing interrogatories or in any search for documents in connection with said interrogatories or the Opposer's First Request for Production of Documents or Opposer's First Request for Admissions to Applicant.

Respectfully submitted,

ROLEX WATCH U.S.A., INC.

Dated: September 8, 2005

By:

Brian W. Brokate
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Amy Celeste Van Eepoel
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES was served by first-class mail, postage prepaid, on September 8, 2005.

Brian W. Brokate

If privilege is claimed as to any document, Applicant shall fully identify the document as to date, name, and capacity of the author(s), the name and capacity of all addressees, and the subject and general nature of the document (as “letter” or “opinion”). The ground for the claim of privilege shall also be given (such as attorney-client privilege, work-product privilege, etc.).

REQUESTS

Opposer requests production of the following:

1. All documents and things that reflect, refer to, relate to, evidence or concern Applicant's conception, selection, adoption, and the first and early uses of the mark or designation ROLL-X SPEED (see Definitions and Instructions in Opposer's First Set of Interrogatories dated September 8, 2005 in connection with each type of product or service identified in response to Interrogatory No. 1).
2. All documents and things which reflect, refer to, relate to, evidence or concern the consumer awareness, consumer understanding, acceptance of, or reaction to, the trademark availability of, or the protectability of, any mark or designation consisting of the term ROLL-X SPEED for Opposer's or Applicant' products and/or services.
3. All documents and things which reflect, refer to, relate to, evidence or concern any service mark use, trademark use, or use analogous to trademark/service mark use, of any mark or designation consisting of or including the term ROLL-X SPEED by or for Applicant in the United States.
4. All documents and things which reflect, refer to, relate to, evidence, or concern any searches conducted by or on behalf of Applicant concerning any mark or designation consisting of or including the term ROLL-X SPEED in the United States.
5. All documents and things which reflect, refer to, relate to, evidence, or concern advertising and/or promotional and/or marketing activity carried on by Applicant in connection with any product or service on which or in connection with which any mark or designation consisting or including the term ROLL-X SPEED has been used in any fashion by Applicant.

6. All documents and things which reflect, refer to, evidence, or concern, the date any mark or designation consisting of or including the term ROLL-X SPEED was first used by or on behalf of Applicant for each type of product or service identified in response to Interrogatory No.1

7. All documents and things that support the information given in response to Opposer's Interrogatory Nos. 8 and 9.

8. All documents and things which reflect, refer to, relate to, evidence, or concern discontinued or interrupted use of any mark or designation consisting of or including the term ROLL-X SPEED by Applicant, after its first use, for any of the products or services identified in response to Interrogatory No. 1.

9. All documents and things that reflect, refer to, relate to, evidence, or concern the information given in response to Opposer's Interrogatory No. 10.

10. All documents and things that reflect, refer to, relate to, evidence, or concern any information given in response to Opposer's Interrogatory No. 11.

11. To the extent not produced in response to Request No. 9, all documents and things which reflect, refer to, relate to, evidence, or concern any mail, telephone calls, checks, orders, inquiries, payments, complaints, deliveries or other communications or materials which were received by Applicant but which were addressed to or which appeared to have been intended for Opposer or which relate to Opposer's products or services offered under Opposer's ROLEX mark.

12. All documents and things that concern, reflect, refer to, relate to, evidence, or mention Opposer or Opposer's products or services offered under Opposer's ROLEX mark.

13. All documents and things which reflect, refer to, relate to, evidence, or concern any state or federal trademark applications filed by Applicant which would cover any mark consisting of or including the term ROLL-X SPEED.

14. All documents and things which reflect, refer to, relate to, evidence, or concern advertising agency or public relations firm activity, including correspondence, for Applicant's products and/or services in connection with any mark or designation consisting of or including the term ROLL-X SPEED.

15. To the extent not provided in response to an earlier request, all documents and things which reflect, refer to, relate to evidence, or concern any information given in response to Opposer's Interrogatory No. 4.

16. All documents and things showing all channels of trade through which Opposer's products or services offered under the Applicant's ROLL-X SPEED mark (see Definitions and Instructions) move or will move and the marketing channels used or intended to be used by Applicant for such products or services.

17. All documents and things showing all classes or types of purchasers to whom Applicant market, or to whom Applicant intend to market, their products or services under Applicant's ROLL-X SPEED mark and who purchase ROLL-X SPEED products or services.

18. To the extent not produced in response to an earlier request, a representative example of each different advertisement or promotional material, presently distributed by or for Applicant, or planned to be distributed by or for Applicant, that mentions, identifies, or describes any products or services offered by Applicant under any mark or designation consisting of or including the term ROLL-X SPEED.

19. To the extent not produced in response to an earlier request, a representative example of each different electronic advertisement, including but not limited to Applicant's website, presently distributed by Applicant, or planned to be distributed by or for Applicant, that mentions, identifies or describes any products or services offered by Applicant under the mark or designation ROLL-X SPEED.

20. All documents and things which reflect, refer to, relate to, evidence, or concern any information given in response to Opposer's Interrogatory Nos. 6 and 7.

21. All documents and things which reflect, refer to, relate to, evidence, or concern any licenses agreements, contracts, assignments, or consents to use, taken or given by Applicant or contemplated by Applicant (or any predecessors of Applicant) relating to any mark or designation consisting of or including the term ROLL-X SPEED.

22. All documents and things which reflect, refer to, relate to, evidence, or concern any assignments taken or given by Applicant (or any predecessors of Applicant) which relate in anyway to any mark or designation consisting of or including the term ROLL-X SPEED.

23. All documents and things that reflect, refer to, relate to, evidence, or concern the degree of recognition of Applicant's ROLL-X SPEED mark in the United States, including but not limited to, reports and surveys that reflect, refer to, relate to, evidence or concern the fame and/or degree of recognition of Applicant's ROLL-X SPEED mark in the United States.

24. All documents, and things, including but not limited to reports of investigations, website printouts, correspondence and settlement agreements, reflecting, referring to, evidencing or concerning, any third parties having used or registered or applied to register any mark or designation consisting of, or including, the term ROLL-X SPEED in the United States.

25. To the extent not produced in response to an earlier request, all documents and things in Applicant's possession reflecting, relating to or concerning consumers "top of the mind recall" or "unaided awareness" of Applicant's ROLL-X SPEED mark in the United States.

26. Documents sufficient to support the information given in response to Interrogatory Nos. 15 and 16.

27. To the extent not produced in response to an earlier request, documents sufficient to support the information given in response to Interrogatory No. 17.

28. To the extent not otherwise produced, all documents mentioned or identified in response to Opposer's First Set of Interrogatories to Applicant or Opposer's First Request for Admissions to Applicant.

Respectfully submitted,

ROLEX WATCH U.S.A., INC.

Dated: September 8, 2005

By:

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was served by first-class mail, postage prepaid, on September 8, 2005.

Brian W. Brokate